

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
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)	
JAKE'S FIREWORKS, INC., FAR EAST)	CPSC Docket No. 11-C0001
IMPORTS, INC., WHOLESALE FIREWORKS)	
ENTERPRISES, LLC, and PACIFIC)	
NORTHWEST FIREWORKS, INC.)	
)	
)	
)	

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Jake's Fireworks, Inc., Far East Imports, Inc., Wholesale Fireworks Enterprises, LLC and Pacific Northwest Fireworks, Inc., and the staff ("Staff") of the United States Consumer Product Safety Commission ("Commission") enter into this Settlement Agreement ("Agreement"). This Agreement and the incorporated attached Order resolve the staff's allegations set forth below.

THE PARTIES

2. The Staff is the staff of the Commission, an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. §§ 2051-2089 and the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. §§ 1261-1278.

3. Jake's Fireworks, Inc. is a corporation organized and existing under the laws of Kansas, with its principal offices located in Pittsburg, Kansas. Far East Imports, Inc. and Wholesale Fireworks Enterprises, LLC are incorporated under the laws of Kansas and share the same address as Jake's Fireworks in Pittsburg, Kansas. Pacific Northwest Fireworks, Inc. is a Washington corporation located in Aberdeen, Washington. At all times relevant hereto, Jake's Fireworks, Inc., Far East Imports, Inc., Wholesale

Fireworks Enterprises, LLC, and Pacific Northwest Fireworks, Inc. (hereinafter collectively referred to as the "Respondents") introduced or caused to be introduced into interstate commerce certain violative fireworks.

STAFF ALLEGATIONS

4. Between December 2006 and September 2007, Respondents imported over 200,000 fireworks that failed to comply with the Commission's fireworks regulations at 16 C.F.R. § 1500.17(a)(3) and 16 C.F.R. Part 1507. (Fireworks subject to this Agreement and Order are identified in Attachment A.)

5. Between December 2006 and September 2007, Commission staff issued 98 separate Letters of Advice to Respondents notifying the firms that the fireworks devices sampled at import were in violation of the Commission's fireworks regulations. Of the 98 violations, 81 violations were for failure to comply with the regulation set forth at 16 C.F.R. 1500.17(a)(3). Section 1500.17(a)(3) requires that fireworks intended to produce an audible effect contain no more than two (2) grains of pyrotechnic composition.

6. The fireworks devices referenced in paragraph 4 are banned hazardous substances pursuant to section 2(q)(1)(B) of the FHSA, 15 U.S.C. § 1261(q)(1)(B), and 16 C.F.R. § 1500.17(a)(3).

7. Respondents knowingly introduced or caused the introduction into interstate commerce or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the banned hazardous substances referenced in paragraph 4 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. § 1263(a) and (c).

RESPONDENTS RESPONSE TO ALLEGATIONS

8. Respondents deny the allegations of the staff set forth in paragraphs 4 through 7 above.

AGREEMENT OF THE PARTIES

9. The Commission has jurisdiction over this matter and over Respondents under the CPSA and the FHSA.

10. The parties enter this Agreement for settlement purposes only. The Agreement does not constitute an admission by Respondents nor a determination by the Commission that Respondents knowingly violated the FHSA.

11. In settlement of the staff's allegations, Respondents shall pay a civil penalty of one hundred thousand dollars (\$100,000.00), for which all Respondents are jointly and severally liable, within twenty (20) calendar days of service of the Commission's final Order accepting this Agreement. The payment shall be by check and made payable to the order of the United States Treasury.

12. Within six (6) months of service of the Commission's final Order, Respondents shall destroy at their own cost, the inventory of all violative fireworks referenced in Attachment A, subject to the terms and conditions set forth in paragraphs 13 through 16. Destruction of the fireworks shall be in accordance with all federal, state and local laws and regulations.

13. Respondents shall provide the Commission staff with seven (7) days advance notice of the time and place of each destruction event so that a Commission investigator may witness the destruction. By witnessing a destruction event, CPSC does not prescribe nor approve specific methods of destruction as safe. At each destruction

event, a principal or an employee authorized by a Respondent company principal shall complete and sign an affidavit of destruction, under the penalty of perjury. The affidavit shall identify the fireworks destroyed by model name, Commission sample number, and the number of units of destroyed. Respondents shall submit the signed Affidavit of Destruction to Michelle Gillice, Trial Attorney, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, no later than seven (7) days after the destruction event.

14. Should Respondents fail to destroy the entire inventory of violative fireworks referenced in Attachment A within six (6) months of service of the final Order, they shall be subject to additional penalties as set forth in paragraphs 15 and 16.

15. Should Respondents fail to comply with the terms of destruction set forth in paragraphs 12 and 13 of this Agreement, Respondents shall pay a penalty of five thousand dollars (\$5,000.00) in liquidated damages for each day such violation continues, for which all Respondents are jointly and severally liable, to the United States Treasury. The amount of liquidated damages in this paragraph shall not exceed seven hundred and fifty thousand dollars (\$750,000.00) in any one calendar year. The remedy in this paragraph shall be in addition to any other remedies available to the United States under the law.

16. The penalties referenced in paragraph 15 will not be imposed if Respondents fail to meet the deadline in performing hereunder if such delay or default is caused by the following events or conditions beyond its reasonable control: force majeure or "Acts of God", wars, insurrections, and Government restrictions, and Respondents notify the Commission within seven (7) days of such event or condition with documentation evidencing the occurrence. Force majeure does not refer to: staff

shortages; sick leaves; late supplies or shortcomings on the part of a third party contracted by Respondents. In case of force majeure or one of the above referenced events or conditions, provided Respondents notify the Commission within the allotted time frame, the destruction obligation will be temporarily suspended during the event or condition period to the extent that such performance is reasonably affected thereby.

17. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). In accordance with 16 C.F.R. § 1118.20(f), if the Commission does not receive any written requests not to accept the Agreement within 15 calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the *Federal Register*.

18. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Respondents knowingly, voluntarily and completely waive any rights they may have in this matter to the following: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (iii) a determination by the Commission as to whether Respondents failed to comply with the FHSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

19. The Commission may publicize the terms of the Agreement and Order.

20. The Agreement and Order shall apply to, and be binding upon, Respondents and each of their successors and assigns.

21. The Commission issues the Order under the provisions of the FHSA, and a violation of the Order may subject those referenced in paragraph 20 above to appropriate legal action.

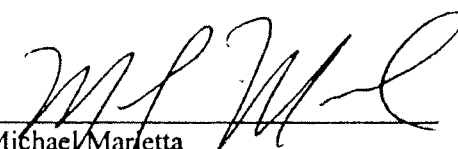
22. This Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

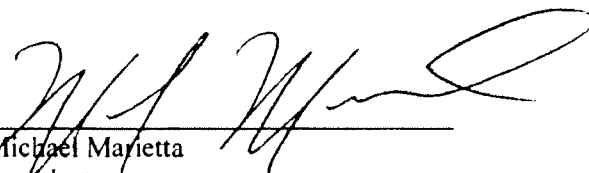
23. If any provision of this Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Respondents determine that severing the provision materially affects the purpose of the Agreement and Order.

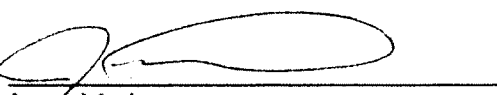
RESPONDENTS

Dated: 10/5/10

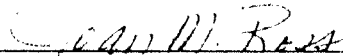
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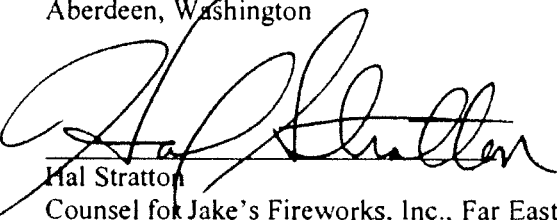

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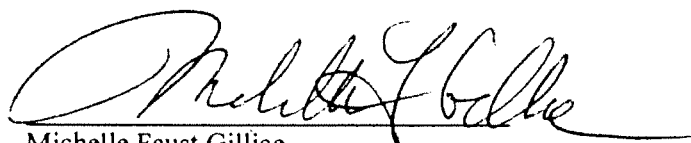
By: 
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Counsel for Jake's Fireworks, Inc., Far East
Imports, Inc., Wholesale Fireworks Enterprises
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U.S. Consumer Product Safety Commission

Cheryl Falvey
General Counsel

Ronald G. Yelenik
Assistant General Counsel
Office of the General Counsel

Dated: 11/18/10

By: 
Michelle Faust Gillice
Trial Attorney
Division of Compliance
Office of the General Counsel

Attachment A

Violative Fireworks

Sample Number	Model Name
07-810-4038	Loyal To None
07-810-4039	Megabanger Firecracker
07-810-4042	One Bad Mother
07-810-4044	One Bad Mother
07-810-4045	Loyal To None
07-810-4046	Megatron
07-810-4103	Cooking with Gas
07-810-4104	The Big Dog
07-810-4106	One Bad Mother 16 Shot
07-810-4111	Time Is On My Side
07-810-4118	Loyal To None
07-810-4119	Scorpions
07-810-4212	Loyal To None
07-810-4420	Megabanger Megatron
07-810-4565	One Bad Mother
07-810-4584	Extreme Machine
07-810-4587	Vendicator
07-810-4588	The Big Package
07-810-4589	Return To Glory
07-801-4590	One Bad Mother
07-810-4624	Loyal To None
07-810-4627	World Class Boom Boom
07-810-4828	Loyal To None
07-810-4830	Return To Glory
07-810-4914	Catastrophic 9 Shot
07-810-5008	Truckin Home
07-810-5009	Professional 3 Pack
07-810-5010	BF Assorted Cakes
07-810-5012	Spyder, Brown Label
07-810-5018	7 Wonders of the World
07-810-5048	Not In My Yard
07-810-5064	Loyal To None
07-810-5066	Megatron
07-810-5095	One Bad Mother
07-810-5096	Loyal To None
07-810-5098	Megatron
07-810-5330	Spyder, Brown Label
07-810-5332	Cocky
07-810-5474	10 Ball Bang
07-810-5475	Can You Handle It?
07-810-5476	Megabanger Megatron

Attachment A

07-810-5481	One Bad Mother
07-810-5482	Loyal To None
07-810-5483	One Bad Mother
07-810-5484	Loyal To None
07-810-5490	Loyal To None
07-810-5491	One Bad Mother
07-810-5511	B.M.F.
07-810-5512	Big Sexy
07-810-5514	Perfection
07-810-5656	The Big Package
07-810-5793	One Bad Mother
07-810-5794	Red White & Blue Forever
07-840-6029	Loyal To None
07-840-6030	The Big Package
07-840-6263	Multishot Shell
07-840-6371	Hydrogen Bomb
07-840-6542	Festival Balls
07-840-6548	One Bad Mother
07-840-6551	Premium Bottle Rocket
07-840-6552	One Bad Mother
07-840-6603	Loyal To None
07-840-6681	One Bad Mother/Shell
07-840-6682	Loyal To None/Shell
07-840-6683	Megatron/Shell
07-840-6737	Loyal To None
07-840-6846	One Bad Mother
07-840-6847	Merlin's Match
07-840-6849	Vendicator
07-840-6865	The Best of the Best
07-840-6867	Flashing Thunder
07-840-6869	Loyal To None
07-840-6904	Loyal to None
07-840-7267	The Big Package
07-840-7269	One Bad Mother
07-840-7283	One Bad Mother
07-840-7291	One Bad Mother
07-840-7292	Loyal To None
07-840-7297	Instigator
07-840-7304	Loyal To None
07-840-7305	One Bad Mother
07-840-7317	Saturn Missile Battery
07-840-7319	Loyal To None
07-840-7320	One Bad Mother
07-840-7321	One Bad Mother
07-840-7324	Red White & Blue Forever

Attachment A

07-840-7328	Festival Balls
07-840-7467	Loyal To None
07-840-7468	So What Are You Looking At/
07-840-7486	Loyal To None
07-840-7289	Whistling Chaser
07-810-5036	Return To Glory
07-810-5037	One Bad Mother 9 Shot
07-810-5041	World Class Loyal To None
07-840-6890	Grave Digger
07-840-6891	Megabanger Megatron
07-840-6892	Megabanger Just Bad
07-840-7091	Loyal To None
07-840-7197	One Bad Mother
07-840-7207	Loyal To None
07-840-7208	The Big Package
07-840-7209	Jumbo Smoke Balls
07-810-5494	Loyal To None
07-810-5738	Loyal To None
07-810-5739	Loyal To None
07-810-5740	Loyal To None
07-810-5781	So What Are You Looking At?
07-810-5782	Saturn Missile Battery
07-810-5785	Loyal To None
07-810-5786	The Big Dog
07-810-5788	Extreme Machine
07-810-5790	Loyal To None
07-810-5791	Loyal to None
07-810-5792	Loyal To None
07-840-7282	Loyal To None
07-840-7288	Loyal To none

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
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JAKE'S FIREWORKS, INC., FAR EAST)
IMPORTS, INC., WHOLESALE FIREWORKS)
ENTERPRISES, LLC, and PACIFIC)
NORTHWEST FIREWORKS, INC.)
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CPSC Docket No. 11-C0001

ORDER

Upon consideration of the Settlement Agreement entered into between Jake's Fireworks, Inc., Far East Imports, Inc., Wholesale Fireworks Enterprises, LLC and Pacific Northwest Fireworks, Inc., (hereinafter, "Respondents") and the staff of the United States Consumer Product Safety Commission ("Commission"), and the Commission having jurisdiction over the subject matter and over Respondents, and it appearing that the Settlement Agreement and Order are in the public interest, it is

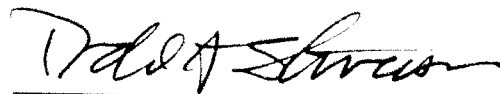
ORDERED, that the Settlement Agreement, be and hereby is, accepted; and it is

FURTHER ORDERED, that Respondents shall pay a civil penalty in the amount of one hundred thousand dollars (\$100,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Respondents to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Respondents at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b); and it is

FURTHER ORDERED, that within six (6) months of service of the Final Order, in accordance with the terms set forth in the Settlement Agreement, Respondents shall destroy at their own cost, the entire inventory of violative fireworks referenced in Attachment A to the Settlement Agreement. Upon the failure of Respondents to comply with the terms of destruction set forth in the Settlement Agreement, the firm agrees to pay to the United States of America, five thousand dollars in liquidated damages for each day such violation continues. The amount of liquidated damages in this paragraph shall not exceed \$750,000.00 in any one calendar year;

Provisionally accepted and provisional Order issued on the 24th day of November, 2010.

BY ORDER OF THE COMMISSION:



Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission